IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.468 of 1989
With
FIRST APPEAL No.931 of 1989
With
CROSS OBJECTION No.90 of 2004
In
FIRST APPEAL No.468 of 1989

Date of Decision : 27/10/2005

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MAHENDRAKUMAR MANILAL PATEL & 1-Appellant(s)
Versus
RAMJIBHAI DALSIBHAI CHAUDHARI & 4-Defendant(s)
(for full cause title, see next sheet)

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Coram:
The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting? Yes

Appearance:

First Appeal No.468 of 1989:

Shri B.N.Keshwani, for Appellant - Owner of Truck No.GTH-7772, Adv.

Shri B.S.Patel, for Respondent-1 - claimant, Adv.

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Whether reporters of Local Papers may be allowed to see the Judgment? Yes

Ms.Mita S.Panchal, AGP, for Respondent-3 - State of Gujarat

Shri P.V.Nanavati, Adv., for Respondent -5 The New India Assurance Co. Ltd.

Rest served

First Appeal No.931 of 1989:

Ms.Mita S.Panchal, AGP, for Appellant - State of Gujarat

Shri B.N.Keshwani, for Owner of Truck No.GTH-7772, Adv.

Shri B.S.Patel, for claimant, Adv.

Shri P.V.Nanavati, Adv., for The New India Assurance Co. Ltd.

Rest served

Cross Objections No.90 of 2004:

Shri B.S.Patel, for claimant, Adv.

Ms.Mita S.Panchal, AGP, for State of Gujarat

Shri B.N.Keshwani, for Owner of Truck No.GTH-7772, Adv.

Shri P.V.Nanavati, Adv., for The New India Assurance Co. Ltd.

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PER: BHAWANI SINGH, CHIEF JUSTICE (C.A.V.):-

1. These Appeals and Cross Objections are directed against the Award of Motor Accident Claims Tribunal (Main), Panchmahals at Godhara, MACP No.98 of 1984, dated 29.10.1988. First Appeal No.468 of 1989 is by insured for setting aside the award, First Appeal No.931 of 1989 is by State of Gujarat for setting aside the Award against it, while Cross Objections No.90 of 2004 are by claimant for enhancement of Award. Therefore, they arise out of the same accident, same parties and common Award. Consequently, being disposed of by this judgment.

2. Shortly stated, accident took place on 10.8.1983. Shri R.D.Chaudhari (claimant) was Police Sub Inspector at that time. Along with other police officials, he had gone to

Godhara, Dahod, etc. on 9.8.1983 from Balasinor in connection with investigation of dacoity case registered at Balasinor Police Station vide C.R.No.59 of 1983. Rasulmiya Ahmadmiya (opponent-1) was driver of Jeep by which the police party was traveling. When they reached near Vavadi-Khurda Patiya on Godhara-Sevalia highway at about 3:30 a.m., it is alleged that Truck bearing registration No.GTH-7772, driven by Ganikhan Ahmadkhan Malek (opponent-4), owned by Mahendrakumar Manilal Patel (opponent-5), insured with New India Assurance Company Limited (opponent-6), with which, Jeep No.GAK-9145 of State of Gujarat (opponent-2) was also insured, came from the opposite direction with full lights towards the Jeep, which was also driven at excessive speed. The driver of the Jeep, with a view to avoid the accident, took it to the left but it dashed with the tree, with the

result, claimant sustained injuries on the left leg, left hand and other parts of the body. Immediately, he was shifted to Civil Hospital, Godhara, treated there and referred to Civil Hospital, Ahmedabad, the same day. Information of this accident was lodged at Godhara Taluka Police Station and C.R.No.85 of 1983 registered. Claimant suffered extensive wound of 15 cm. x 10 cm. over left leg with muscles exposed and crushed with no movement and sensation. Plaster was applied on super condylar fracture bunerus (left). He was admitted in the hospital, treated as an indoor patient as left leg below knee was amputed. He was discharged with plaster after 59 days carrying permanent disability of 70%. He was unable to sit cross legged, he could not move without crutches, he could not run nor walk fast, he could not drive motorcycle or car, he could not swim or take part in sports. He was

due for promotion but may lose it due to amputation, he may lose further promotions to the post of Dy.S.P. or D.S.P. He remained without work for five months ten days. therefore, suffered loss of leave also. He was given fitness certificate for joining duties from 20.1.1984. Claimant states that Jeep driver was driving it with excessive speed rashly and negligently and failed to exercise due care and caution. He was in the employment of State of Gujarat, owner of the Jeep. Driver of the Truck was also driving it negligently at an excessive speed with full lights on at the time of accident. He also failed to exercise due care and caution, came towards the Jeep, with the result, driver of the Jeep took turn to the left to avoid the accident, but stuck against a tree. Truck driver was in the employment of Mahendrakumar Manilal Patel, owner of Truck, duly insured

with the New India Assurance Company Limited; all the opponents liable for compensation.

3. Opponents-1 & 2 admit factum of accident, place and date thereof, however, allegation of rashness and negligence by driver, future loss of promotions, etc. is denied. Alternatively, it is stated that Truck driver, owner of Truck and insurer are liable for the accident. Insurance Company of Jeep denies the income of claimant and negligence of Jeep driver and states that Truck driver was responsible for the accident. Same Insurance Company (opponent-6) denies the income, age and nature of injuries suffered by the claimant. It denies the rashness and negligence of Truck driver and throws the responsibility on Jeep driver, besides, states that the claim is highly exaggerated. It is denied that claimant would get removed from

service on account of the handicap. It is also denied that claimant could not drive motorcycle, car or any other vehicle. Extent of 70% disability is also denied and losses pointed out by the claimant are not admitted. Owner and driver of Truck have not filed written statement. Insurance Company, New India Assurance Company Limited, with which the two vehicles were insured, has filed separate written statements through different advocates, opposing the claim and their responsibility against each other. On the pleadings of parties, Claims Tribunal framed the following issues (Ex.18) on 16.8.1984:

> (1) Whether it is proved that the claimant sustained injuries on account of rashness and negligence on the part of the driver of the vehicle in driving the vehicle involved in the accident?
>
> (2) What amount, if any, the claimant is entitled to by way of compensation and from which of the opponents?

(3) What order?

4. After recording of evidence and hearing the parties, the Claims Tribunal came to conclusion that the claimant sustained injuries on account of rashness and negligent driving by opponents-1 & 4, Jeep driver and Truck driver, to the extent of 30% and 70% respectively. Claimant has been granted compensation of Rs.5,00,000/- with interest at the rate of 12% p.a. form the date of application till realization with costs. Feeling aggrieved by and dissatisfied with the Award, Appeals and Cross Objections, mentioned above, have been filed, on the grounds being discussed hereafter.

5. Shri B.S.Patel, learned counsel for the claimant, contended that Appeal is not maintainable since owner of vehicle (Truck)

did not contest the claim before the Tribunal. Reliance is placed on our decision - United India Insurance Company Limited v. Shilpa Jigishbhai @ Jignesh Patel and others (GLR 2005(2) 1784). There is no force in this contention. In the case to which reference is made, owner did not file written statement nor appeared at any stage before the Claims Tribunal to contest the claim petition. With this background, it is held that owner cannot challenge the Award on merits as no contention was raised by him before the Tribunal nor appeared before it at any stage. However, in this case, he may not have filed written statement, but appeared before the Tribunal during the proceedings.

5.1 Question with regard to maintainability of joint appeal by insurer and insured does not survive with transposition of

New India Assurance Company Limited as respondent, to maintain the Appeal, vide Court order dated 28.1.2004 in First Appeal No.468 of 1989. [See: (1) Narendra Kumar and another v. Yarenissa and others ((1998)9 SCC 202), (2) Chinnama George v. N.K.Raju (2000 ACJ 777 (SC)), (3) National Insurance Co. Ltd. v. Nicolletta Rohtagi (2002 ACJ 1950 (SC)), (4) H.S.Ahamed Hussain v. Irfan Ahammed (2002, ACJ 1959 (SC)) and (5) Asha and others v. United India Insurance Co. Ltd and another (2004 ACJ 448)].

5.2 The insured submitted that Cross Objections No.90 of 2004 are not maintainable for the reasons that claimant has been awarded compensation claimed by him and no court fee has been paid thereon. We find no force in this objection. Claimant states through Cross Objections that he has not been awarded just

compensation. Statutory responsibility to award just compensation is cast on Court. In case there is no evidence to justify higher award than claimed by the claimant, amendment of claim, striking of the issue, and permitting parties to lead evidence may be necessary, but where there is evidence on record to justify higher award claimed, Court can and should allow it without asking for amendment of claim. Position in this regard is settled by the Apex Court in Nagappa v. Gurudayal Singh and others (2002 AIR SCW 5348 : 2003(1) GLR 897). The claim for enhancement at the appellate stage can be put up through Cross Objections registered without objection from the insured. Non payment of Court fee is dependent upon enhancement which can be made good by passing appropriate directions.

6. Having dealt with the initial hiccups, we advert to the basic questions advanced for our consideration by learned counsel for the parties. Shri B.N.Keshwani, learned counsel for the insured, contended that there is no evidence to establish the involvement of the Truck. Initial onus is on the claimant to demonstrate that the Truck driver was negligent which has not been discharged. Therefore, finding of Claims Tribunal on the basis of criminal case is not justified. Reference is made to Anil Behari Ghosh v. Smt. Latika Bala Desai & others (AIR 1955 SC 566). Shri Keshwani vehemently contended that even otherwise, perusal of criminal Court order plainly shows that it is cryptic and does not connect Truck driver with the accident out of which claim petition arises. The intention of police is to involve the Truck driver in accident which he never committed. These

submissions are seriously disputed by Shri B.S.Patel, learned counsel for the claimant, submitting that the Truck driver did not file written statement opposing his involvement as alleged. He has not been produced in evidence by the insured, who himself did not file written statement, simply participated in the proceedings, and failed to appear in the witness box nor produced any other evidence to justify the allegation.

7. There is no dispute about police party having gone in the Government Jeep for investigating the case of dacoity and coming to the site of accident during that period of time. There is also no dispute about claimant being one of the occupants in the Jeep; no dispute about involvement of this Jeep driven by Rasulmiya Ahmadmiya, driver of the State Government. There is also no dispute that the

Truck was owned by the insured, and insured with the New India Assurance Company Limited. There is no evidence from the insured pointing out that the Truck did not pass through this road on that day during this period. The best person to support the insured could be the driver of the Truck, but he has neither appeared nor filed written statement nor contested the claim at any stage nor any evidence produced or cited by the insured. Truck driver could explain how accident took place and why he admitted commission of crime before the Criminal Court which punished him. The Criminal Court convicted him and imposed sentence of fine after he admitted commission of crime. He did not challenge this order before the appellate Court. He did not file written statement in this case nor appeared at any stage to explain his conviction and spell out his defence of unnecessary involvement by

the Police. The insured did not file written statement nor subjected the claimant and the driver of the Jeep to cross-examination on this point. Therefore, submission is belated and an afterthought, liable to be rejected. Jeep driver states that he was driving the vehicle at the speed of 40/50 kms. per hour, Truck came from opposite direction with full speed and full lights, due to the head lights of the Truck, his eyes were glazed and therefore, he had to take the Jeep to left of the road, which hit the tree, as a result, it got damaged. His statement is preferable with that of the claimant, who states that Truck hit the Jeep, since there is no evidence of collusion between the Truck and the Jeep. Fact remains that accident is result of rash and negligent driving by Truck driver moving with head lights on which glazed the eyes of Jeep driver, who, with a view to avoid the

accident, took the Jeep to the left and hit the tree. Truck driver did not use deeper so that vehicle from opposite direction could move comfortably nor slowed down the speed, what to talk of stopping the Truck. Truck is a heavy vehicle, a titan on the road, occupying larger part of it, sometimes leaving little space for smaller vehicle to move, what to talk of halting by application of brakes since driver of it feels safe and secure as against smaller vehicle. It is the duty of drivers of heavy vehicles to drive cautiously, allow space to smaller vehicles. Position of driving with head lights on during night on a straight road is more dangerous since it is difficult for drivers of vehicles from opposite direction to face glazing lights, therefore, normal conduct of a heavy vehicle should be either to stop the vehicle, switch off the lights and allow vehicle from opposite

direction to pass or go to its extreme left side. At least, use of deeper is necessary. Truck driver did not attend to these requirements qua a Police Jeep, what to talk of others, with the result, Jeep driver could not control his vehicle and with a view to avoid the accident, hit the tree. Responsibility for the accident on the part of Truck driver is therefore more than held by the Claims Tribunal, as compared to Jeep driver, who could also stop the Jeep when he was feeling uncomfortable with the glazing lights of the Truck hoping that Truck driver would stop as against Police Jeep. Therefore, there is enough evidence for the involvement of Truck driver, order of conviction and sentence by Criminal Court further corroborates his involvement. There can be no objection against this evidence since strict rules of Law of Evidence are not applicable to

decide claims under the Act, which can either be lodged at the instance of claimant(s) or in terms of sub-section 4 of Section 166 on report submitted under sub-section 6 of Section 158 by Police Officer incharge of Police Station (See: Bontu Venkata Rao and another v. Kalla Venkataramana and another - 2005 ACJ 77). Order of conviction and sentence is a judicial order. Driver has admitted commission of crime. These proceedings cannot be assailed by one who is not party to it. Judicial proceedings / record is sacrosanct and final, therefore, unquestionable [See: Central Bank of India v. Vrajlal Kapurchand Gandhi and another (2003 AIR SCW 3485), State of Maharashtra v. Ramdas Shrinivas Nayak and another (AIR 1982 SC 1249), Hiraben Mangabhai v. Maganbhai Somabhai (1997(2) GLR 1704) and United India Insurance Co. Ltd. v. Ramanbhai Kachrabhai Raval & Ors. (1996(1) GLR 553)].

Decision in Anil Behari Ghosh v. Smt. Latika Bala Desai & others (supra) does not help the insured. On deeper analysis of evidence, Truck driver is held responsible to the extent of 90% and Jeep driver, 10%.

8. Next question pertains to assessment of compensation. Claims Tribunal are constituted by State Government for the purpose of adjudicating upon claims for compensation in respect of accidents, involving the death of, or bodily injury, to persons arising out of the use of motor vehicles, or damages to any property of third party so arising, or both, under Section 165, Chapter XII, Motor Vehicles Act, 1988 (hereinafter referred to as "the Act"). Section 166 provides for application for compensation and Section 168 prescribes that on receipt of application for compensation

made under Section 166, the Claims Tribunal shall hold inquiry into the claim and may make an award determining the "amount of compensation which appears to it to be just". Therefore, under this Section, the amount of compensation is expected to be "just". Justness of the Award is determined in the context of the peculiar facts of each case without being confined to any rigid mechanical formula. However, while examining the matter, the Court may take into account Section 1-A and Section 2, Fatal Accidents Act, 1855, which read:

> *"1-A. Suit for compensation to the family of a person for loss occasioned to it by his death by actionable wrong --*
>
> *Whenever the death of a person shall be caused by the wrongful act, neglect or default and the act is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death*

had not ensued, shall be liable to an action or suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been so caused and shall be brought by and in the name of the executor, administrator or representative of the person deceased."

"2. Not more than one suit to be brought --

... ...

Claim for loss to the estate may be added --

Provided that, in any such action or suit, the executor, administrator or representative of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by such wrongful act, neglect or default, which sum, when recovered, shall be deemed part of the assets of the estate of the deceased."

Above quoted Sections contemplate different and distinct kinds of compensation. Under Section 1-A, damages are required to be paid to one or more of the relatives of the deceased for the loss of their dependency, while under Section 2, damages are required to be paid to the estate on account of the loss caused to the estate. The loss to the estate can be awarded to the legal heirs of the deceased even if they are not dependent on him, but loss on account of dependency calculated under Section 1-A can be paid only to the dependents of the deceased. There can be cases wherein both categories of claims are available to the same set of persons. Nonetheless, when the Court is called upon to assess compensation on account of some negligent act in a motor accident, the Court has to keep in mind that under Section 1-A, it has to assess loss caused to the legal heirs,

which means, the loss caused to the dependents of the deceased should be assessed on the basis of the value of their dependency, while the loss caused to the estate should be assessed on the basis of savings which the deceased could have made to augment his estate. For example: `A' was earning Rs.500/- per month. He was spending Rs.300/- per month on his dependents and Rs.100/- on himself, thereby saving Rs.100/- per month. In this case, loss of dependency is calculated on the basic amount of Rs.300/- per month while loss to estate on Rs.100/- per month. If his dependents are also his legal heirs, they would get compensation on the basic amount of Rs.400/- per month. Generally, it is found that claims fail to make mention of loss of estate, nor evidence led to justify proper calculation of compensation, with the result, Courts allow amount of Rs.2,500/- as per

Second Schedule to Section 163-A of the Act. While assessing compensation in the context of two Sections of Fatal Accidents Act, 1855, two methods are stated. First is Unit Method and the second, Multiplier Method, which can be expressed in the following formula:

(A – E) x (Y) = Total compensation for loss of dependency as well as loss to the estate.

In this formula, (A) represents the amount of wages which the deceased was earning, (E) represents the expenditure incurred by the deceased for his own self and (Y) represents the number of years' purchase. In this formula (A – E) covers the amount of dependency as well as the amount of accretion to the estate. Therefore, in cases where compensation is required to be assessed separately for the loss of dependency and loss

to the estate, (A – E) should be further split up to know the separate figure of dependency and accretion to the estate, and then multiplication by (Y) applied to each. Although Unit Method has been in vogue and applied by various countries, but Multiplier Method has proved successful, therefore, followed in England. This method is recognized and applied by the Apex Court in various decisions including Gobald Motor Services Ltd. v. R.M.K. Veluswami (AIR 1962 SC 1), Municipal Corporation of Delhi v. Subhagwanti (1966 ACJ 57), C.K.Subramonia Iyer v. T.Kunhikuttan Nair (1970 ACJ 110), Madhya Pradesh State Road Transport Corporation v. Sudhakar (1977 ACJ 290), and Hirji Virji Transport and others v. Basiran Bibi (1971 ACJ 458).

In General Manager, Kerala State Road

Transport Corporation v. Susamma Thomas and others (1994 ACJ 1), the Apex Court said in Paragraph 11 that:

> *"11. It is necessary to reiterate that the multiplier method is logically sound and legally well-established. There are some cases which have proceeded to determine the compensation on the basis of aggregating the entire future earnings for over the period the life expectancy was lost, deducted a percentage therefrom towards uncertainties of future life and awarded the resulting sum as compensation. This is clearly unscientific. For instance, if the deceased was, say, 25 years of age at the time of death and the life of expectancy is 70 years, this method would multiply the loss of dependency for 45 years – virtually adopting a multiplier of 45 – and even if one-third or one-fourth is deducted therefrom towards the uncertainties of future life and for immediate lump sum payment, the effective multiplier would be between 30 and 34. This is wholly impermissible. We are aware that some decisions of the High Courts and of this court as well have arrived at compensation on some such basis. These decisions cannot be said to have laid down a settled principle. They are merely*

instances of particular awards in individual cases. The proper method of computation is the multiplier method. Any departure, except in exceptional and extraordinary cases, would introduce inconsistency of principle, lack of uniformity and an element of unpredictability for the assessment of compensation. Some judgments of the High Courts have justified a departure from the multiplier method on the ground that section 110-B of the Motor Vehicles Act, 1939, in so far as it envisages the compensation to be `just', the statutory determination of a `just' compensation would unshackle the exercise from any rigid formula. It must be borne in mind that the multiplier method is the accepted method of ensuring a `just' compensation which will make for uniformity and certainty of the awards. We disapprove these decisions of the High Courts which have taken a contrary vide. We indicate that the multiplier method is the appropriate method, a departure from which can only be justified in rare and extraordinary circumstances and very exceptional cases."

See also U.P. State Road Transport

Corporation v. Trilok Chandra and others (1996 ACJ 831)

9. The Supreme Court said in R.D.Hattangadi v. Pest Control (India) Pvt. Ltd. and others (1995 ACJ 366) that while fixing the amount of compensation payable to a victim of an accident, damages have to be assessed separately as pecuniary damages and special damages, in other words, pecuniary loss and non pecuniary loss. Pecuniary damages are those which are capable of being calculated in terms of money whereas non pecuniary damages are incapable of being assessed by arithmetical calculations. Pecuniary damages include (i) medical expenses, (ii) loss of earning or other profits, (iii) loss of earning capacity or incapability in the labour market and (iv) material loss because of the injuries which

leave him with setback for the rest of his life. Non pecuniary damages include (i) damages for pain, shock and suffering, already suffered and/or likely to be suffered in future, (ii) loss of amenities of life which may include inability to walk, run or sit, (iii) damages for the loss of expectancy of life on account of injury, as on account of injury, the normal longevity of the person concerned is shortened, (iv) damages for inconvenience, discomfort, disappointment, frustration and mental stress etc. This groups of categories may not be exhaustive. Facts of the case, statutes, judicial pronouncements, experience and innovation may point out further heads/ sub heads for application in case(s) coming before the Court for adjudication. It is settled principle that in disablement cases, compensation payable is higher than in fatal cases, since it is the

claimant himself who utilizes compensation amount and it is he who has to suffer the impact of accident throughout his remaining life. [See: Bhagwan Das v. State of Himachal Pradesh & Ors. (1994 ACJ 702)]. The extent of compensation depends on the extent of disablement, its duration and consequences on the life of a victim, details of which may vary from case to case. While assessing the damages, Court may give the same head-wise or by way of global figure, but sine-qua-non is `just' compensation and also not to award compensation which amounts to unjust enrichment.

10. Application of multiplier is another important factor for assessment of compensation. Generally, age of victim is considered for application of multiplier as per the Second Schedule to Section 163-A of

the Act. Peculiar facts of the case may call for deviations. Apex Court said in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas and others (supra) that age of deceased or parents, whichever is higher, is relevant guide for application of multiplier. One can say experience of a Judge and facts of the case help in proper application of multiplier since no fixed norm / law can be laid down in this regard.

11. Adverting to the case under discussion, keeping in mind that it is a case of personal injury, for assessment of proper damages, evidence adduced by the parties has to be clearly analyzed and understood. Accident took place on 10.8.1983. Claimant, at the time of accident, was at the threshold of his career. He was 34 year old working as

Police Sub Inspector. The injuries which he suffered due to the accident rendered him helpless and crippled for the rest of his life. Requirement of Police force is perfect physical fitness, always available for movement and acts on which depends his promotions and post superannuation life. After long treatment, his left leg below knee is amputed. He had suffered other injuries and fracture on left hand also. Therefore, apart from amputation of left leg below knee, he remained under plaster for these injuries, treated in various hospitals, as indoor patient from 10.8.1983 to 7.10.1983, thereafter outdoor patient for further treatment, permanent partial disability to the extent of 70% due to imputation of leg, unable to move without crutches, thereafter with artificial leg and unable to work with left hand, super condylar fracture bunerus (left)

fracture, unable to walk fast, climb, drive vehicles and take part in sports and outside investigations, parades, therefore, all round handicap. These injuries caused him great pain, shock, physical discomfiture, loss of pleasure and amenities of life. Doctor states that artificial limb will have to be replaced after two years, eight times in fifteen years. It was contended that claimant could change artificial limb at lower cost from Jaipur, therefore, claim for higher compensation for future replacements is not justified. We fail to understand this submission. Fact remains that artificial limb requires replacement after two years. In case better and suitable artificial limb is available at any other place, claimant can use the same. Further, it was contended that claim for compensation under the head of pain, shock and suffering is not justified. Again, this submission cannot

be accepted. At the cost of repetition, it is stated that claimant suffered extensive wound of size 15 cms. x 10 cms. over left leg with muscles exposed and crushed with no movement and sensation, therefore, it was amputed on 10.8.1983 below knee, plaster applied to it, other fracture on left hand. He must have really suffered mental agony, pain and shock. He also suffered physical discomfiture and loss of pleasures and amenities of life. He spent on medicines, nursing, lodging and boarding, cost of two attendants, for special diet, conveyance expenses, loss of salary and loss of future earnings. It is contended that claimant has not suffered these losses, therefore not entitled for claim, he did not suffer loss of salary and loss of promotions since he was promoted upto the rank of Dy.S.P., future loss is not justified, since employment after superannuation is not

available to him.

In this accident, claimant suffered following injuries, medical certificate issued by Dr.K.S.Shah, Civil Hospital, Ahmedabad (Ex.50):

> (1) Supertie Slab over left lower limb from indoor extensive wound over left leg size 15 cm x 10 cm muscles exposed, muscles crushed.
> Tenderness on skin on lower part of wound. There was no movement and no sensation.
> Tibia fibula below knee amputation was done on 10.8.83 at 11:30 a.m.
> (2) Supertie plaster over left upper limb from indoor supra condlyoar fracture humerus left.
> (3) Abrasion over left frontal region size 1-1/2"x 1".

After considering the submissions advanced by learned counsel for the parties, Claims Tribunal allowed compensation under different heads, namely, (i) Rs.75,000/- (pain, shock and suffering), (ii) Rs.3,000/-

(medicines), (iii) Rs.8,000/- (nursing costs), (iv) Rs.3,000/- (special diet), (v) Rs.13,000 (conveyance expenses), (vi) Rs.28,000/- (loss of salary), (vii) Rs.12,000/- (expenses for buying limbs in future) and (viii) Rs.3,62,250/- (loss of future earnings), totally Rs.5,04,250/-, paid Rs.5,00,000/-, although claimed Rs.9,86,349/- through written arguments submitted before the Claims Tribunal. During the course of submissions by learned counsel for the insured and claimant, main emphasis was directed to heads of (i) pain, shock and suffering, (ii) expenses for buying limbs in future, and (iii) loss of future earnings. Payments by the Government are on specified items, therefore, many other items require personal spendings. Charges for boarding, lodging, special diet, conveyance, etc. are not payable nor cost of artificial legs. A man from Police force can easily

engage in other better assignments. He can also engage in post retirement assignments, security service being one of them, looking to improved longevity and nature of their service. During service, he can secure accelerated promotions and obtain monetary awards for achievements in investigations, parades, and engagements in social duties like earthquakes, floods, riots, etc. But an officer suffering from disability, particularly of leg, would be at loss in post accident service and employment market. Normal promotions in service may be there but they do not compensate these losses. In Mahomed Hanif Dallu v. Lunkaran Ganpatram Sharma & Anr. (1980 GLR 412), this Court said in paragraph-9:

> *"..... The victim's eligibility for employment, assuming that in his future life he would have sought employment, was bound to be reduced because of the injury suffered by him. It was also*

held that in any case, any person not suffering from such disability would be preferred and, therefore, there was a loss of chance of favourable employment. Even assuming that the appellant would not have sought employment but taken to some profession, there is no manner of doubt that even if there be no total loss of career, there will be considerable handicap in pursuing the same career ....."

Thereafter, in paragraph 9-A, this Court said:

"..... Sometimes permanent partial disability may not have immediate effect on the plaintiff's earnings and it may be fond that he was still able to earn his pre-accident wages and to perform his pre-accident work. Nevertheless his disability would render him unfit for some profession or occupation for which he was previously fit and qualified and such a man is at a disadvantage compared with his colleagues in the labour market ....."

In paragraph 7-A of this decision, this Court said:

".... that the fall in the value of money in our country was the main factor to be kept in view while assessing the damages on the count of pain and suffering. It was observed that the need for periodical reassessment of damages at certain key points was a felt need and the requirement of adjusting awards to changing conditions was realised ....."

12. Learned counsel for the parties drew our attention to some decisions touching the award of compensation for loss of limbs, in some cases arms, in other cases legs, but the approach of Courts has not been consistent in awarding compensation since different cases different facts.

13. Giving consideration to the submissions advanced by learned counsel for the parties, Apex Court decision in Nagappa v. Gurudayal Singh and others (supra), which clearly lays down that claimant is entitled to

`just' compensation, Court should grant it irrespective of claim made by the victim of accident, on the available evidence or allow amendment to be made and opportunity to lead evidence. Further, claimant can also be awarded compensation for future medical treatment. We are not in agreement with the contentions raised by Shri B.N.Keshwani relying on B.H.Nagarathana and others v. Karnataka State Road Transport Corporation (1999 ACJ 1472), that claimant is not entitled to more compensation than claimed by him, he is not aggrieved person since he has been awarded compensation claimed by him. This is not so. Through written submissions, claim for Rs.9,86,349/- is made. The Tribunal assessed compensation of Rs.5,04,250/- but awarded Rs.5,00,000/- on the ground that compensation to this extent is claimed. This conclusion is not reflected from written submissions of

claimant taken on record by the Tribunal. Looking to the seriousness of injuries resulting in amputation of one leg, long treatment, claimant must have undergone great pain, shock and sufferings and continue to suffer in future as discussed hereinbefore. Therefore, compensation under this head deserves to be enhanced to Rs.1,25,000/-. According to the doctor, artificial leg requires to be replaced every two years. It is contended that reasonable compensation has been awarded under this head. Claimant cannot be asked to use artificial limbs from Jaipur alone because they are cheaper. Question is of suitability and reliability. In case better artificial limb is available elsewhere, he can do so. Shri B.S.Patel contended that claimant has replaced artificial leg number of times costing him much more than awarded by the Tribunal. To buttress this submission, Bill

No.120 dated 12.2.2002, Rehabs Physical Restorations, A-1, Mangalsai, Opp.Baroda Hi-School, 84, Alkapuri Society, Vadodara-390007, is placed on record (Mark-X). Claimant may have replaced artificial leg after two years as stated by the doctor but expenditure statements/ bills have not been filed. Opposite parties do not state that claimant undertook replacement of limbs from Jaipur during all replacements. Therefore, in these circumstances, expenses for buying limbs is increased to Rs.1,20,000/-. Similarly, there is loss of future earnings as discussed in preceding part of judgment. Claims Tribunal has awarded Rs.3,62,250/-. Taking monthly salary Rs.3,500 / 70% (disability) = Rs.2,450 x 12 = Rs.29,400 x 17 = Rs.4,99,800/-, compensation for loss of future earnings is increased to Rs.4,99,800/-.

The claimant is therefore entitled to enhanced compensation of Rs.2,95,550/-.

14. No other submission was advanced.

15. Therefore, First Appeal No.468 of 1989 is dismissed. First Appeal No.931 of 1989 is allowed to the extent that the liability of Jeep driver is 10%. Cross Objections No.90 of 2004 are allowed to the extent that claimant shall be entitled to enhanced compensation of Rs.2,95,550/- with interest at the rate of 12% p.a. from the date of application till payment. Enhanced compensation be deposited within two months. After payment of Court Fee on the enhanced compensation by the claimant, payment be released to the claimant. Cost of these Appeals and Cross Objections shall be borne by parties.

(Bhawani Singh)
Chief Justice

(H.K.Rathod)
Judge

(sunil)